

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-239

May 14, 1998

ATLAS EQUITY, INC. D/B/A
PERFORMANCE TELECOM
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Switchless
Reseller Interexchange Telephone
Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
RESALE SERVICE AND
APPROVING SCHEDULE OF
RATES AND TERMS AND
CONDITIONS

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, the Commission grants Atlas Equity, inc. d/b/a Performance Telecom (Performance or Company) the authority to provide switchless resale interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules as filed on March 27, 1998 (pp. 1-13). Pursuant to Chapter 280, §§ 11 and 12, we exempt Performance from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On March 27, 1998, Performance applied for authority to operate in Maine pursuant to 35-A M.R.S.A. §§ 2102 and 2105. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral

basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Performance the authority to provide interexchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). Performance's application provides reasonable information indicating that its financial and management capabilities are adequate to provide interexchange services in Maine.

II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions filed by Performance to go into effect. Performance used the Commission's expedited process for approval. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms and conditions and find that they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Performance's terms and conditions and the Commission's Rules or a statute, the rule or statute will govern.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Performance's services and rates in the market provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Performance to go into effect.

III. WAIVER OF PAYMENT OF ACCESS CHARGES

Our approval of Performance's application to provide interexchange service in Maine is conditioned on the payment of access charges to New England Telephone and Telegraph Company d/b/a Bell Atlantic as Access Administrator for the State of Maine. Because the Commission's Chapter 280 requires that *each* interexchange carrier pay applicable access charges, the chapter ordinarily requires both an underlying carrier and a switchless reseller¹ to pay access charges for the same call. Switchless

¹For purposes of applying the access charge waiver, we define switchless resellers as entities that do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use

resellers may avoid double payment of access by asking the Commission to waive certain sections of Chapter 280.

The Commission has determined that Performance is a switchless reseller. Using the Commission's standard Waiver Request Form (attached to this Order), the Company has asked the Commission to waive the requirement of Chapter 280 that requires it to pay access charges, subject to the conditions and requirements described on the Waiver Request Form. We find that the granting of the waiver upon those conditions is reasonable and grant the waiver subject to the stated conditions. Performance has stated that MCI will be its underlying carrier from which it purchases services that it resells. MCI is authorized by the Commission to provide intrastate interexchange service.

Performance shall inform the Commission and the New England Telephone and Telegraph Company d/b/a Bell Atlantic as the Access Administrator for the State of Maine, immediately if there is any change in its operations that will result in its carrying or switching any of its own traffic. In addition, Performance shall notify the Commission if it changes its underlying carrier, within 10 days following the change.

IV. OTHER WAIVERS; REPORTING REQUIREMENTS

Pursuant to sections 11(A) and 12(A) of Chapter 280, Performance is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. However, as required by Chapter 280, § 11(A), Performance must report its annual intrastate gross operating revenues and its annual intrastate minutes of use for the purpose of determining its regulatory assessment.² Pursuant to Chapter 280, § 11(B), Performance

shall maintain records sufficient to identify
and to allow auditing of traffic volumes,
intrastate interexchange billings for both
retail and wholesale services, and all
information that is necessary to calculate

that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

Pursuant to Chapter 280, § 12, the exemption from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

V. OTHER REQUIREMENTS

Performance shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 6.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Atlas Equity Inc. d/b/a Performance Telecom to provide interexchange service throughout the State of Maine;

2. Approve Performance's proposed Terms and Conditions and Rate Schedules (pages 1-13); those Schedules shall be effective on May 14, 1998;

3. Grant Performance's Request for Waiver of the requirement under certain sections of Chapter 280 that it pay access charges subject to the conditions and requirements stated on the attached Waiver Request Form. Performance shall immediately inform the Commission and the Access Administrator if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic. Performance shall notify the Commission of any change in its underlying carrier within 30 days following the change;

4. Exempt Performance from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

5. Exempt Performance from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but Performance shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Performance or of any entity that owns more than 50% of Performance. The notice required by this

subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Performance shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. Performance shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Performance shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Direct that Performance shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine this 14th day of May, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt